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# THE POWDER TRUST, 1872-1912

## SUMMARY

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AMONG the numerous combinations in restraint of trade that have been attacked in recent years by the government under the Sherman Act, the so-called "Powder Trust" is probably the most interesting; and this for several reasons. In the first place the Powder Trust has had perhaps the longest continuous existence of any combination, the Standard Oil Company alone excepted. Secondly, the combination has demonstrated that, contrary to the general experience, it is possible for a pool to maintain itself through a long period of years without either breaking

down or to any great extent losing its effectiveness. Finally, peculiar interest attaches to the Powder Trust in its later history because of the unique scheme employed by E. I. du Pont de Nemours and Company, to be considered in the latter part of this article, for dissolving subsidiaries.

The history of the Powder Trust falls naturally into three periods, as follows: —

- I. From April 23, 1872, to July 2, 1890, the date of the passage of the Sherman Act.
- II. From July 2, 1890, to March, 1902, when Thomas, Pierre, and Alfred du Pont incorporated the E. I. du Pont de Nemours and Company, the Delaware corporation of 1902.
- III. From the incorporation of March, 1902, to the present day.

### PERIOD I

At 10 o'clock on April 23, 1872, certain persons representing six gunpowder manufacturers<sup>1</sup> held a meeting in New York City at the office of F. L. Kneeland, 70 Wall Street. A seventh concern, tho not represented, expressed in a letter its entire agreement with the purposes and objects of the assemblage.<sup>2</sup> The secretary of the meeting, Mr. A. E. Douglass, representing the Hazard Powder Company, read a proposed scheme of association, which was amended in some respects to conform to the opinions

<sup>1</sup> The concerns represented were as follows. E. I. du Pont de Nemours and Co., the Lafin and Rand Powder Co., the Oriental Powder Mills, the American Powder Co., Miami Powder Co., and the Hazard Powder Co. All citations are from the Testimony, Exhibits, Briefs, and documents in the suit of the United States of America v. E. I. du Pont de Nemours and Co et al U S C. C., for the District of Delaware, No. 280. In Equity.

<sup>2</sup> This seventh concern was the Austin Powder Company, a corporation of Ohio.

of those present and was then ordered to be printed and distributed for further consideration and action to the participating firms and companies. It was resolved that a committee of four should be appointed by the chairman who should arrange a price schedule for the prominent markets of the United States and report at the next meeting.<sup>1</sup>

On April 29th, at an adjourned meeting, the committee of four reported back a price schedule which was unanimously adopted as were also, substantially unchanged, the articles drafted at the prior session. The name of the pool was to be the "Gunpowder Trade Association of the United States." Its declared purpose was to ensure "an equitable adjustment of prices and terms for sales of powder throughout the United States."<sup>2</sup> Tho seven concerns composed its original membership, it was provided that any manufacturer might signify in writing to the President his desire to become a member and might be admitted to the combination. Representation was based largely upon the size of the concern. E. I. du Pont de Nemours and Company, and the Hazard and the Laffin and Rand Powder Companies were allotted ten votes each. The Oriental Powder Mills received six votes and each of the other concerns four votes. The Association was to fix and regulate the minimum prices for powder, for which purpose, presumably, it was provided that the association should meet quarterly.

A "Council" of five persons was to be elected by the associates. It was to meet weekly or at the call of the chairman, and three members were to constitute

<sup>1</sup> Confidential Minutes of the Meeting of the Manufacturers of Gunpowder, April 23, 1872. Gov't Exhibit No 96, Pet Rec Exhibits, vol. i, pp 471-472.

<sup>2</sup> Articles of Association, Gov't Exhibit No 96-b, Pet. Rec Exhibits, vol. i, pp 476-477.

a quorum. To it all questions of price discrepancies and discriminations were to be referred, as well as all complaints of infractions of the agreement. The "Council" was to give a final adjudication upon these questions, by a majority vote, subject to the right of an aggrieved member to appeal to the next quarterly meeting of the association.<sup>1</sup> The object of the Council, as alleged by the government in its Brief was solely to secure the maintenance of the price schedules established by the Association.<sup>2</sup>

At the time of the formation of the Association there was in existence and doing business, in the western part of the United States, a company known as the California Powder Works. In 1875 the combination began a campaign of under-selling for the purpose of eliminating that concern from the field. The outcome of the contest was the sale by the California Powder Works of  $43\frac{1}{3}$  per cent of its stock to E. I. du Pont de Nemours and Company.<sup>3</sup> In the same year an agreement was entered into between the Association and the western concern. Rules were adopted by which the prices of powder in the states and territories of Utah, Wyoming, Montana, Colorado, and New Mexico (territory known as the "Neutral Belt") were to be named by the "Representative Agents" of the Association, but not to be less than certain minimum prices fixed by that Association. Members engaged not to sell below prices and terms thus established, upon penalty of one dollar per keg for such sales, payable in gold.<sup>4</sup> In 1880 this agreement was renewed for a term of five years. The latter compact provided that the Association should neither

<sup>1</sup> *Op cit.*, Articles of Association, p 478

<sup>2</sup> Brief for the United States, vol 2, p 8

<sup>3</sup> Cf Amended Pet, Pleadings, pp. 18-19

<sup>4</sup> Gov't Exhibit No 96-t Pet Rec Exhibits, vol. 1, pp 521 ff.

sell in nor ship into the states of California, Oregon, and Nevada and the territories of Arizona, Idaho, Washington, and Alaska, British possessions or colonies west of the Rockies.<sup>1</sup> The Neutral Belt was preserved subject to the same kind of an agreement in regard to prices as was utilized in the arrangement of 1875. The California Powder Works upon its part agreed to refrain from any shipments into the territory east of the Neutral Belt, which was to belong exclusively to the Association.<sup>2</sup>

In May, 1876, an agreement was secured from the Sycamore Powder Company to maintain the rate schedules of the Association.<sup>3</sup> Presumably this was not a difficult task, for as early as 1873 the du Pont interests had purchased 500 shares in this concern.<sup>4</sup> About the same time another agreement was made, this time with the Lake Superior Powder Company, whereby that concern agreed to confine its sales to a certain definite territory. The Association had earlier agreed that such of its members as were not at that time in enjoyment of the Lake Superior trade would not attempt to enter that district.<sup>5</sup>

Prior to this, in 1876, the articles of association were so amended that, in case of an infraction of

<sup>1</sup> Except that du Pont de Nemours, the Hazard, and Lafin and Rand Companies were given rights to make shipments up to certain amounts. Gov't Exhibit No. 4, Pet Rec. Exhibits, vol i, p. 45

<sup>2</sup> Ibid, Agreement, pp. 49 ff.

<sup>3</sup> Gov't Exhibit No 96-z, Pet Rec Exhibits, vol 1, p 534

<sup>4</sup> Testimony of E C Lewis, Def Rec Testimony, vol 1, pp 403-409. The remainder of the stock was purchased by the same parties a few years later

<sup>5</sup> Compendium of Rules, June 1, 1881. Gov't Exhibit No 97, Pet. Rec Exhibits, vol 11, Secs 37-38, p 834 About 1877 or 1878 a majority of the stock of the Lake Superior Powder Company was acquired for cash by the du Ponts and other interests. Cf. Testimony of J. G. Reynolds, Def Rec vol 11, pp 589-590 Amended Pet of Gov't asserts that both of these concerns were forced into the agreements by ruinous competition Cf Amended Pet Pleadings, p 23 Assertions are rebutted in defendant's testimony. Def Rec Testimony of E C. Lewis, vol i, pp 412-413, testimony of J G Reynolds, ibid, vol. 11, p 590

prices, charges thereof should be preferred by a written notice twenty days previous to the quarterly meeting. The notice was required to state definitely the place at which the goods in which the cut was claimed to have been made were sold and delivered. At the quarterly meeting the associates, each having one vote, would hear the evidence and determine its value. Their decision was to be final and the penalty was to be paid in cash to the Association. This, of course, eliminated the necessity of the council of five members, originally provided for in the agreement of 1872, and that paragraph was in consequence repealed on August 2, 1876.<sup>1</sup> The various "triers" appointed under the new provision, to secure the maintenance of prices soon found plenty of work for them to perform. In the first place three new independent companies entered the gunpowder trade between 1878 and 1881 in competition with the Association. The result was a decided and general demoralization of prices and the conditions of the trade.<sup>2</sup> These circumstances subjected the Association to the most severe test of its career. Between 1881 and 1883 the minutes show that 230 cases of violations of price agreements were tried by the Association.<sup>3</sup> There is evidence to prove that it was a practical impossibility to maintain the schedule of prices, and that each member looked out for his own interest.

There is also abundant testimony to show that a part of this demoralization in prices was caused by a campaign of under-selling inaugurated against the above mentioned independent companies in the period

<sup>1</sup> Amended Articles of Ass'n, Gov't Exhibit No. 96-ee. Pet. Rec. vol. i, pp. 558-561. For repeal of the section regarding the Council see Gov't Exhibit No. 96-bb. Pet. Rec. Exhibits, vol. i, pp. 546-547.

<sup>2</sup> Cf. Ans of the King Powder Co, Pleadings, p. 410 Also Testimony of Gershon M. Peters, Def. Rec. Testimony, vol. ii, pp 689-692

<sup>3</sup> Cf. Brief, vol 2, p. 14

1880-85. For example, in the case of the King's Great Western Powder Company, the Hazard Powder Company gave instructions to its agents to cut the price with the guarantee to each customer that it should be ten cents lower than any price that the King's Company would make them. Prices on rifle powder in Cincinnati, where the King's Company was located, went down to \$2.25 per keg, altho in the New England and other states it was \$6.25. Blasting powder declined in price from \$2.75 or \$2.85 to 80 cents per keg in the same locality.<sup>1</sup> Substantially the same methods were employed against both the Ohio Powder Company and the Marcellus Powder Company,<sup>2</sup> the other two of the independents, with the result that all three were forced to yield to the combination,<sup>3</sup> and became parties to a new combination on August 23, 1886, together with the concerns already in the Association.

The purpose of the agreement of 1886 was: "regulating in a convenient and desirable manner the business of the parties . . . including the regulation of the prices at which such powder shall be sold; for the purpose of avoiding unnecessary loss in the sale and disposition of such powder by ill regulated or unauthorized competition and under-bidding by the agents of the parties hereto". . . . The terms of the agreement provided that the nine parties to the

<sup>1</sup> Testimony of R. S. Waddell, Brief for the United States, vol 2, pp 16-20. It is only fair to say that it was endeavored to rebut the testimony of Waddell in regard to the methods of competition employed against these independent companies, and to so far as possible, discredit it. Cf. Testimony of Gershon M. Peters, Def Rec Testimony, vol ii, pp 690-691, 699, 729-731.

<sup>2</sup> Cf. Amended Pet. in Pleadings, pp. 28-29. Testimony R. S. Waddell, Brief vol ii, pp. 22-23.

<sup>3</sup> In 1886, the stock of the Marcellus Company was sold to du Pont de Nemours, the Hazard, and Lafin and Rand Companies and the Oriental Powder Mills. In the same year the Ohio Powder Company disposed of 38 per cent of its stock to the first three of these companies, Cf. Amended Pet. Pleadings, p. 32.



combination, known as the "Nine Companies,"<sup>1</sup> outside of the Laffin and Rand, Hazard, and du Pont de Nemours Companies, known as the "Three Companies," should be allotted arbitrary quotas of so many thousand kegs of powder per year. Whenever the "Three Companies" should show an increase in average yearly sales of powder, it was provided that the total allotments to the "Nine Companies" should be correspondingly increased.<sup>2</sup> In case the "Nine Companies" sold more than their total allotment, they agreed to take from the "Three Companies" sufficient powder to adjust the liability at a price of three-quarters of the established sales prices, in the case of sporting, and five-sixths in the case of blasting powder.<sup>3</sup> Thus the "Three Companies" were left free to sell as much powder as they could, it being merely provided that when their sales should increase beyond the average for the years 1882, 1883, and 1884 the total allotment of the "Nine Companies" should be increased. On the other hand, if the "Nine Companies" sold more than their allotment, including such increases in percentages as might accrue to them through increases in sales by the "Three Companies" during the year, they were obliged to adjust this by purchase from the said "Three Companies."

The agreement established a "Board of Arbitration" consisting of a chairman and two other members who were to be designated by the Association. The Board was to settle all the questions in dispute and their decisions thereon were to be final.<sup>4</sup> The Schagti-

<sup>1</sup> Oriental Powder Mills, Miami Powder Company, American Powder Mills, Austin Powder Co., King's Great Western Powder Co., Lake Superior Powder Co., Sycamore Powder Mfg. Co., Ohio Powder Co., and Marcellus Powder Co.

<sup>2</sup> Cf. Agreement. Gov't Exhibit No. 7, Pet. Rec. Exhibits, vol. i, p. 114.

<sup>3</sup> *Ibid.*, pp. 117-119.

<sup>4</sup> *Ibid.*, pp. 119-120.

coke Powder Company, a majority of whose stock was held by Lafin and Rand, was to be regarded in the matter of sales as a part of the latter company. Lafin and Rand on their part guaranteed that the Schaghticoke Company would comply with all the provisions of the agreement.<sup>1</sup> Within six months of the formation of this new combination agreement the prices that had so declined during the early eighties had recovered to practically their former figures.<sup>2</sup> The trade of the California Powder Works was, as before, regulated by a supplementary agreement.<sup>3</sup> Four other supplementary agreements were also entered into in the two next succeeding years, at New Orleans, Chattanooga, Louisville, and Cincinnati respectively, looking to the strict enforcement of the regulations and prices of the Association.<sup>4</sup>

As provided by its own terms the agreement of 1886 lapsed or was to lapse on December 31, 1889. But before that date the same twelve companies, parties to the 1886 agreement, entered into the so-called "Fundamental Agreement" of 1889. The objects of the third compact as stated were identical with those of the second one. In operation also the new

<sup>1</sup> *Ibid*, p 121

<sup>2</sup> Testimony of Gershon M Peters. Def. Rec. Testimony, vol. II, pp. 697-698 Cf. Testimony of R S Waddell, Brief, vol 2, pp 28-29.

<sup>3</sup> The agreements were slightly altered. Certain of the members of the combination were allowed to ship into Pacific Coast Territory a limited amount of certain high grade goods But none were allowed to ship in goods of the lower grade. Such sales, however, as were made in this territory were to be at prices named by the California concern and were also to be in accordance with its rules. In return the California Powder Works was permitted to make sales, with certain exceptions, east of the "neutral belt," territory formerly exclusively reserved to the combination. An interesting feature of these agreements is the designation of the parties thereto not by their names, but by certain letters of the alphabet. Cf Abstracts referring to Pac. Coast Sales Gov't Exhibits Nos 114 and 115, Pet Rec Exhibits, vol II, pp. 996-1001.

<sup>4</sup> The text of the agreements at New Orleans, Louisville, and Cincinnati may be found in Pet Rec. Exhibits, Nos. 8-10, vol I, pp 123-132. Reference is made to the Chattanooga Agreement in a letter of the Hazard Powder Company to its agent at Chattanooga. Gov't Exhibit No 46, *ibid.*, p 254

pool adopted in general the same methods previously in vogue under that agreement. The United States was divided into seven districts and, as before, trade on the Pacific Coast was to be regulated by a supplementary arrangement with the California Powder Works.<sup>1</sup> A "Board of Trade" of five members succeeded the "Board of Arbitration" of the preceding agreement, with power to fix and alter prices and to adjudicate grievances. The total volume of sales was to be regarded as the aggregate trade for the year and was to be divided in direct proportion to the yearly allotment of each one of the parties.<sup>2</sup> The Board of Trade was directed to make computations of sales in excess of or deficiencies below the allotments thus provided for and to furnish each party with a written accounting in full detail. Within thirty days parties liable were required to pay cash into the treasury for excesses. This money was then to be distributed among the parties entitled thereto as shown by the accounting.<sup>3</sup>

One paragraph of the Fundamental Agreement provided that any one who was injured by an overt act of the Board of Trade, "as for instance the reduction of a price at a place, in treatment of a local disturbance of trade," should be compensated for the loss sustained by the payment of money.<sup>4</sup> The new agreement embraced companies that controlled ninety-five per cent of the output of rifle powder and ninety per cent of the output of the blasting powder of the United

<sup>1</sup> Fundamental Agreement, Gov't Exhibit No 6, Pet Rec Exhibits, vol. 1, pp. 94-109 Cf pp 100-101.

<sup>2</sup> Hazard, Lafin and Rand, and du Pont de Nemours Companies to be regarded as one party.

<sup>3</sup> Fundamental Agreement, Gov't Exhibit No. 6, Pet. Rec. Exhibits, vol 1, pp. 101-102

<sup>4</sup> Op. cit Fundamental Agreement, p. 107.

States.<sup>1</sup> The agreement was to go into effect in January, 1890, and was to continue in force to June 30, 1895, and indefinitely from year to year thereafter, unless one or more of the parties should give notice of intent to withdraw from it.<sup>2</sup> As a supplement to the Fundamental Agreement an "Auxiliary Agreement" was entered into on the 19th of December, 1889. This made specific provision for the work of the Board of Trade, and laid down numerous rules in regard to deliveries, agents, magazines, etc.<sup>3</sup>

With the conclusion of the Fundamental Agreement of 1889, the first period of the history of the powder combination closes. It may be styled the period of inception. In it both the gunpowder trade and the dynamite trade went through the first stage of combination. The gunpowder trade in this period has been combined effectively; but the dynamite trade (as will appear presently) was not fully organized until later. The full consolidation of the dynamite trade belongs in the second period, as well as does the story of the establishment of closer and more harmonious relations among the members of the combination.

## PERIOD II

The passage of the Sherman Act in 1890 was apparently unknown to the members of the combination. This was perhaps not unnatural, since at that time, or at least shortly after, the associates had much more vital matters to attend to. These related chiefly to the suppression of competition. Between 1890 and 1894, three new concerns entered the field of

<sup>1</sup> Testimony of R. S. Waddell, Brief, vol 2, p. 37.

<sup>2</sup> *Op cit.* Fundamental Agreement, p. 108.

<sup>3</sup> Auxiliary Agreement, Gov't Exhibit No. 100, *Pet. Rec Exhibits*, vol. ii, pp 906-911.

powder manufacture, *i. e.*, Chattanooga Powder Company in 1890, Phoenix Powder Manufacturing Company in 1891, and the Southern Powder Company in 1894.<sup>1</sup> The Chattanooga Company had scarcely begun business before war against it was commenced by the combination. Mr. F. J. Waddell was instructed by Eugene du Pont "to put the Chattanooga Powder Company out of business by selling at lower prices."<sup>2</sup> Acting under these orders that gentleman went into southern territory where he sold powder at cost, or below in some cases. By paying the railroad agent at Ooltewah, Tennessee, from \$15 to \$18 per month, Waddell was furnished with a weekly statement of the powder shipments made by the Chattanooga Company together with the name of the consignee, the number of kegs, and the destination;<sup>3</sup> a method of competition that reminds one strongly of the methods of espionage employed by the Standard Oil Company upon various occasions. Finally in the latter part of 1895 the Chattanooga concern sold out.<sup>4</sup> Scarcely less vicious in character was the campaign waged against the Phoenix and the Southern Companies, both of which capitulated to the superior strength of the combination,<sup>5</sup> and passed under its control.<sup>6</sup>

<sup>1</sup> Cf. Amended Petition, Pleadings, pp. 37-39. Besides these concerns the Equitable Powder Company was organized in 1892. At the time of its organization du Pont de Nemours acquired 41 per cent of its capital stock.

<sup>2</sup> Testimony of F. J. Waddell. Brief, vol. 2, p. 60.

<sup>3</sup> *Ibid.*, p. 60 ff.

<sup>4</sup> Laffin and Rand and the du Pont de Nemours Company acquired 55.41 per cent of its stock. Cf. Amended Pet. Pleadings, pp. 40-41.

<sup>5</sup> Cf. Testimony of F. J. Waddell, Brief, vol. 2, pp. 67-75.

<sup>6</sup> Laffin and Rand, du Pont de Nemours, and the Hazard Company acquired all or a very large portion of the stock of the Southern Powder Company and later dismantled its mills. Cf. Amended Pet., Pleadings, p. 40. Laffin and Rand and the Hazard Company together with the American Powder Mills and the Miami and Austin Companies acquired the capital stock of the Phoenix Powder Mfg. Co. Cf. Gov't Exhibit No. 136, Pet. Rec. Exhibits, vol. iii, p. 1694, also answers of various companies in Pleadings, pp. 192, 244, and 426.

About July 1, 1896, the combination held a "round up" as one somewhat facetious witness styled it. To put it in other words, the outsiders were whipped.<sup>1</sup>

Prior to the close of this competitive struggle, on May 8, 1895, the combination at its quarterly meeting appointed a committee to formulate a revision of the Fundamental Agreement. This action was occasioned by the notification of the president of the King Powder Company<sup>2</sup> that the stockholders did not wish to renew their arrangements with the combination.<sup>3</sup> The terms of the Revised Agreement were substantially identical with those of the older Fundamental Agreement, merely eliminating one or two sections including the article in regard to compensation for injuries suffered through overt acts of the Board of Trade<sup>4</sup> and continuing the great majority of the rules embodied in the early document.<sup>5</sup>

In 1896 the acquisition of the new companies, the Chattanooga, Phoenix, and Southern, gave rise to a new agreement known as the "Understanding."<sup>6</sup>

<sup>1</sup> Testimony of F J Waddell, Brief, vol 2, p 73

<sup>2</sup> Formerly King's Great Western Powder Company The name was changed in 1878

<sup>3</sup> Minutes of Manufacturers Meeting, Gov't Exhibit No 104, Pet Rec Exhibits, vol 11, p. 953

<sup>4</sup> Supra, p. 454, note 3

<sup>5</sup> Revised Agreement, Gov't Exhibit No 106, Pet Rec Exhibits, vol. 11, pp 958-961.

<sup>6</sup> Fundamental Agreement of 1896, Gov't Exhibit No 111, Pet Rec Exhibits, vol 11, pp 973-989 This Agreement is called "the pool agreement" in the Amended Petition. In the Amended Petition an agreement of 1891 is referred to known as the President's Agreement This provided for a Board of Trade composed of a representative from each of the concerns in the combination No mention is made of this, however, in the Brief for the United States, which document does show, however, that in 1893 a Board of Trade of only five members was in operation (Brief for the United States, vol 2, p 54) Therefore, if such a representative board was provided for in 1891, it must have gone out of existence very shortly Moreover, the index to the Brief gives the heading of President's Agreement referring to vol 11, p. 53, of that document where the only agreement mentioned is the "Revised Agreement" of 1895 The Amended Petition does not speak of any agreement of 1895 Knowledge of the President's Agreement is specifically denied by the King Powder Company, and Laffin and Rand in the answers of these defendants to the suit of the United States. Cf. Pleadings, pp. 238-239 and 416.

This document practically continued the Fundamental Agreement of 1889. There was to be but one copy of the Understanding, which was to have no title, and this single copy was to remain in the custody of the Advisory Committee. A syllabus or abstract of the document was, however, to be prepared and given to each member of the combination.<sup>1</sup> Letters of the alphabet were used to designate the various parties to the agreement. A key<sup>2</sup> was also adopted indicating the parties represented by the alphabetical designation. A comparison of the abstract of the Understanding with the Fundamental Agreement reveals but slight differences in the purport of the two documents. Sales in the sixth and seventh districts, *i. e.*, the Pacific Slope District, and the Neutral Belt, were to be regulated by the agreements of 1886,<sup>3</sup> and the Advisory Committee (instead of the Board of Trade) of five members was to regulate prices and other matters as before.<sup>4</sup> Including the Schaghticoke Company, the new combination embraced seventeen concerns outside of the California Powder Works.<sup>5</sup>

Almost immediately after the combination of 1896 was formed, prices of powder were advanced by the combination.<sup>6</sup> Between 1896 and 1904, the period during which the agreement of 1896 was operative,<sup>7</sup> rights were given to some of the members of the com-

<sup>1</sup> Minutes, Gov't Exhibit No 110, Pet. Rec. Exhibits, vol II, p. 971.

<sup>2</sup> For a copy of this "Key" cf Pet Rec Exhibits, vol II, p 989-990

<sup>3</sup> *Supra*, p 453, note 2

<sup>4</sup> Cf. Agreement of 1896, Gov't Exhibit No 111, Pet. Rec. Exhibits, vol. II, p. 973-989, or Abstract (of the same), Gov't Exhibit No 113, *ibid* , p 992-996.

<sup>5</sup> To the original twelve companies were added the Chattanooga and Southern Powder Companies, the Phoenix and Equitable Powder Mfg Companies and the Schaghticoke Company. The last two, it will be recalled, were strongly affiliated with the du Pont and Lafin and Rand Companies

Testimony of Jonathan A. Haskell, Def. Rec Testimony, vol II, p. 1117.

<sup>7</sup> Answer of Lafin and Rand, Pleadings, pp. 247-248.

bination to contract with certain particular customers, at specified prices set by the Association, below the regular schedule prices. The awarding of these contracts was in the hands of the Advisory Committee, under certain regulations adopted by the parties to the combination.<sup>1</sup>

It will be recalled that immediately after the adoption of the Fundamental Agreement of 1889 the prices of powder were raised and that in the early nineties the Association was obliged to meet severe competition on the part of outsiders. Now the rise in prices that followed the agreement of 1896 was accompanied by exactly the same phenomena. Between 1896 and 1902 four new independents were organized outside of the combination; the Birmingham, Indiana, Northwestern, and Fairmount Powder Companies. In the case of the Birmingham Company the combination secured the freight rates out of Birmingham on all the railroads, and set a price on powder of 70 cents per keg, f. o. b. Birmingham, and then added the freight from there to points that ought to be reached so that powder would not net more than 70 cents a keg at Birmingham,<sup>2</sup> and awaited results. As the relator of this method of arrangement laconically remarked: "It was, perhaps, a year until they died."<sup>3</sup>

The Indiana Powder Company was a somewhat different form of company than the ordinary. It was promoted, if that term be allowed, by a George L. Rood, formerly a salesman in the employment of the Hazard Powder Company,<sup>4</sup> who induced several mine owners and operators of West Virginia, Ohio,

<sup>1</sup> Minutes, Gov't Exhibit No 118-1, Pet Rec Exhibits, vol 11, pp. 1071-1072

<sup>2</sup> Testimony of F J Waddell, Brief, vol 2, pp 129-130.

<sup>3</sup> Ibid, p 130.

<sup>4</sup> Testimony of George L Rood, Def Rec Testimony, vol. 1, pp 420-423.



Kentucky, and Indiana to go in with him and organize the company. The mine owners and operators were in the habit of selling powder to their miners, and, being interested in the new concern, would buy their powder from it. The work of construction upon the mills just outside of Terre Haute had not much more than begun before F. J. Waddell and Mr. Colvin of the Hazard Powder Company appeared upon the scene of action. Their object was to determine if some agreement could not be arrived at between the Hazard Company and the new concern. The proposition offered was that the Indiana Company increase their capital stock and sell the Hazard Company 51 per cent of it at par.<sup>1</sup> The offer was, however, refused; Rood completed his works and began to get out his powder.

In the meantime Eugene du Pont and Mr. F. W. Olin (the latter of the Equitable) had been appointed a committee to attend to the Indiana's competition. The Great Northern Supply Company was organized by the combination and began business in the vicinity of Terre Haute, as near as possible to the mines of the coal operators who were stockholders in the Indiana Powder Company. The Supply Company put out a line of wagons retailing powder at \$1.25 per keg, while the price agreed upon by the miners and operators was \$1.75 per keg. The Great Northern Supply Company obtained its powder from the overlying companies, chiefly from Laflin and Rand, the Hazard, du Pont de Nemours, and American.<sup>2</sup> The contest lasted from about 1899 to the latter part of 1901 or

<sup>1</sup> Testimony of F. J. Waddell, Brief, vol 2, p 137 and of George L. Rood, Def Rec. Testimony, vol 1, pp 425-427

<sup>2</sup> Testimony of H. M. Barksdale, Def Rec Testimony, vol 11, pp 663-666 and F. J. Waddell, Brief, vol 2, pp. 138-140, George L. Rood, Def Rec Testimony, vol. 1, pp. 428-429.

early 1902. Rood finally made a proposition to the combination and it was accepted. A majority of the Indiana's stock was sold out to Laffin and Rand and E. I. du Pont de Nemours and Company at a rate of five in cash to one in stock. Rood at the same time agreed not to embark in the powder business for a period of twenty years.<sup>1</sup>

The North Western Powder Company had been subjected to the same competition as the Indiana through the fact that it was located only about thirty-five miles from the Indiana Company's plant,<sup>2</sup> and was operating in practically the same manner as the latter concern.<sup>3</sup> Rood also arranged for the sale of the stock of this concern to certain members of the combination,<sup>4</sup> at about the same time as he disposed of the Indiana Powder Company. The fourth company of those entering upon the manufacture of powder between 1896 and 1902, the Fairmount Company, was a small concern in West Virginia and sold out very quickly.<sup>5</sup> As to the Great Northern Supply Company, that concern was liquidated and made an assignment for the benefit of its creditors, the principal ones being E. I. du Pont de Nemours and Company, and Laffin and Rand.<sup>6</sup>

The control and power of the powder combination was further strengthened between 1896 and 1902 by a series of agreements entered into with various individuals and concerns. An agreement with A. S. Speece and Company provided that in consideration

<sup>1</sup> Testimony of George L. Rood, *Def Rec Testimony*, vol 1, pp 430-431, 439

<sup>2</sup> *Op cit* *Def Rec. Testimony*, vol 1, p 431.

<sup>3</sup> Brief, vol 11, p 152

<sup>4</sup> *Ibid*, note 1, above

<sup>5</sup> A majority of the stock of the Fairmount Company was purchased by the du Pont interests Cf *Answer of the Fairmount Powder Company, Pleadings*, p. 326

<sup>6</sup> Testimony of H. M. Barksdale, *Def Rec Testimony*, vol 11, p 666

of \$800 per annum they and their representative, D. M. Kirk, would engage to keep out of the powder business. An agreement of like nature was concluded on May 15, 1896, with F. L. Kellogg. Some sort of a compact was also entered into between the Belmont Powder Works, party of the first part, and E. I. du Pont de Nemours and Laffin and Rand, party of the second part; while A. S. Kirk and Company had agreements, the precise character of which is not revealed by the documents.<sup>1</sup> Further, on January 29, 1901, a contract was made whereby the King Powder Company agreed to sell its entire output of powder, except such as might be required by the Peters Cartridge Company with which it was intimately associated, to E. I. du Pont de Nemours and Company, and Laffin and Rand for a period of twenty-five years from the first day of April, 1901.<sup>2</sup> With the purchase of the majority or entire control of the four powder companies that had entered the field between 1896 and 1902, the Birmingham, Indiana, Fairmount, and Northwestern, and the completion of the agreements just mentioned, competition in the manufacture of blasting and sporting powders seems to have been nearly eliminated throughout the United States except in the state of Pennsylvania.<sup>3</sup>

It now becomes necessary to go back somewhat in order to examine the process by which the Powder Trust secured control of the dynamite trade. Dynamite, a high explosive, was first manufactured on the

<sup>1</sup> Brief, vol 2, pp 155-158

<sup>2</sup> Testimony of Gershon M Peters, Def Rec. Testimony, vol 11, pp 708-710 Cf. also Gov't Exhibit No 333, Pet. Rec Exhibits, vol v, pp 2393-2398

<sup>3</sup> This is the allegation of the Government in its Brief where it is stated that the same is admitted by the answer of E I du Pont de Nemours in the Pleadings, Cf Brief, vol 2, p. 161 and Pleadings, pp 148-151. The writer feels that the admission in the terms in which it is couched is so qualified as to preclude its being regarded as an absolute affirmation of the charge

Pacific Coast about the year 1869. It was used to a considerable extent in the western states as a substitute for blasting powder before it made much progress in the East.<sup>1</sup> Before long, however, it became evident that dynamite was a strong competitor of blasting powder. It became not merely desirable but absolutely necessary that the powder combination should control it, blasting powder being one of its principal articles of manufacture.

About 1879 or 1880 the Repauno Chemical Company had been formed by the du Pont and Laflin and Rand interests for the purpose of manufacturing dynamite. At that time there were in the United States several concerns engaged in the manufacture of that explosive. On the Pacific Coast were the California Powder Works and the Giant Powder Company; in the East were the Aetna Powder Company and the Lake Superior Powder Company, while a branch of the California Powder Works was also operating in that section. A branch of the Giant Powder Company, known as the Atlantic Dynamite Company, was doing business in the state of New Jersey. At the time of the organization of the Repauno Chemical Company another concern, the Hercules Powder Company, was also organized by the same interests, for the purpose of acquiring the eastern plant of the California Powder Works. Coincidentally the same parties also purchased one-third of the stock of the Giant Powder Company's subsidiary, the Atlantic Dynamite Company.<sup>2</sup>

Up to 1895 the stockholders of the three last mentioned concerns remained practically the same, that is to say, the du Pont and Laflin and Rand interests controlled both the Hercules Powder Company and the

<sup>1</sup> Brief, vol. 2, p. 166

<sup>2</sup> Testimony of H. M. Barksdale, Def Rec Testimony, vol. 11, pp 598-601

Repauno Chemical Company, holding at the same time a one-third interest in the Atlantic Dynamite Company. It so happened that the business of the Atlantic Company in the East was conducted by two agents, between whom, from time to time, a considerable amount of friction arose. At length the California owners found themselves in a position where they must dismiss one of these men and continue the other, or else secure some one else to manage their business for them in the East.<sup>1</sup> The upshot of this situation was the organization of the Eastern Dynamite Company under New Jersey laws with an authorized capital stock of \$2,000,000. Of this \$1,400,000<sup>2</sup> was issued in exchange for the capital stocks of the Repauno Chemical Company and Hercules Powder Company. The remaining \$600,000<sup>3</sup> was exchanged for the assets of the Atlantic Dynamite Company. Now as du Pont de Nemours and Company and Laflin and Rand had owned together nine-twelfths of the stocks of the Repauno and Hercules Companies, they received nine-twelfths of the stock of the Eastern Dynamite Company in exchange therefor, or nine-twelfths of \$1,400,000, which gave them \$1,050,000 of stock out of a total capitalization of \$2,000,000 and therefore control.<sup>4</sup> After the transfer of the property of the Atlantic Dynamite Company to the Eastern Dynamite Company the directors of the latter concern caused to be incorporated in New Jersey the Atlantic Dyna-

<sup>1</sup> Op. cit Def Rec Testimony, vol. ii, p 617.

<sup>2</sup> Resolutions of Directors of the Eastern Dynamite Company Gov't Exhibit No. 150, Pet Rec Exhibits, vol iv, p 1761-1762

<sup>3</sup> Ibid , Exhibit No. 149, p. 1760

<sup>4</sup> Laflin and Rand and the du Pont Company received also \$200,000 additional stock as their share of the Atlantic Dynamite deal. The holdings of both, including that of the du Pont's through the Hazard, which they owned outright, were in the year 1902, \$1,206,000.

mite Company and caused the Eastern Dynamite Company to subscribe for the entire issue of its stock amounting to 5500 shares.<sup>1</sup> This process left the Eastern Dynamite Company a mere holding corporation.

As a whole the dynamite trade was combined and consolidated with great rapidity. In 1895 the Eastern Dynamite Company entered into an agreement with the Aetna Powder Company known as the "Memorandum of Understanding," the object of which was to secure the apportionment of the dynamite trade between those two companies and the companies controlled by them. The two parties to the combination were to divide business between themselves upon a basis of the proportion of total trade enjoyed by each for the year ending June 30, 1895. If the Aetna over-sold its quota it was to pay Jonathan A. Haskell, representing the Eastern Dynamite Company, a penalty of two cents per pound on such over-sales. On the other hand, if the Aetna had not sold its proportion of the total trade it was to be reimbursed at the rate of two cents per pound by Haskell. A "Standing Committee" of five members with the same function as the Board of Trade of the powder combination was established. This committee was to meet monthly on, or as near as possible to, the date of meeting of the Board of Trade of the Gunpowder Association. Neither party of the two parties to the agreement was to interfere with the business of the other. If one took trade from the other by reducing prices, he was heavily penalized upon a demonstration of that fact. Trade diverted to an outside competitor was to be considered as belonging to an associate for at least six months and for three more if requested.

<sup>1</sup> Brief, vol. 2, p. 167.

If either company purchased any other high explosive company, it was entitled thereby, the other party not participating in the transaction, to sell a proportionally larger percentage of the total trade.<sup>1</sup> The advantage of this last arrangement was clearly with the Eastern Dynamite Company. Between the middle of 1896 and the middle of 1899 that holding company acquired the New York Powder Company, the United States Dynamite Company, Clinton Dynamite Company, Mt. Wolf Dynamite Company, American Forcite Powder Manufacturing Company, and several other concerns.<sup>2</sup>

At one time in its history the American Tobacco Company started to invade the territory across the water. In the case of the powder trust the reverse occurred. In 1897 foreign manufacturers of gunpowder, detonators, and high explosives began the erection of factories at Jamesburg, New Jersey. Representatives of the American combination, therefore, shortly crossed the water and opened negotiations with the foreign manufacturers who had begun the invasion. The result was that a satisfactory agreement was arrived at which has been known under various titles as the Jamesburg Agreement, the London Agreement, the International Agreement, and the European Agreement.<sup>3</sup> This agreement is so typical an example of full-fledged international combination that its

<sup>1</sup> Memorandum of Understanding, Gov't Exhibit No. 236, Pet. Rec. Exhibits, voll iv, 1991-1995. A supplementary agreement was entered into explanatory of this original. "Memorandum of Understanding," showing, among other things, the exact percentages allotted to each party. Cf. Supplementary Explanation of Original Agreement. Gov't Exhibit No. 247, Pet. Rec. Exhibits, vol. iv, pp. 2016-2019.

<sup>2</sup> A list of these companies is given in the supplementary explanation of the original agreement between the Aetna and Eastern Companies. Gov't Exhibit No. 247, Pet. Rec. Exhibits, vol. iv, pp. 2016-2019.

<sup>3</sup> Brief, vol. 2, pp. 174-175. It is to be noted that the Judson Dynamite and Powder Company, and the Giant Powder Company Consolidated had not been before parties to the agreements of the Powder Combination but were brought into it in the European agreement.

principal provisions deserve detailed statement. They were: —

1. In regard to detonators the "European Factories"<sup>1</sup> agreed to abstain from erecting works in the United States, and to abandon the project begun at Jamesburg. The expenses so far incurred in the construction of this plant were to be shouldered by the "American Factories"<sup>2</sup> which also agreed to take of the "European Factories" five million detonators per year.<sup>3</sup>

2. As to black powder both parties bound themselves to erect no factories, the Americans in Europe, the Europeans in the United States. Each, however, was free to ship into the territory of the other.<sup>4</sup>

3. The arrangements in regard to smokeless sporting powder were the same as in regard to black powder.<sup>5</sup>

4. Smokeless military powder factories were not to be erected by the Americans in Europe or the Europeans in America. It was agreed that European factories upon receipt of an inquiry from the Government of the United States in regard to explosives, should first ascertain the price quoted or fixed by the American factories and were then bound to neither quote nor sell below that figure. Reciprocally the American factories on receiving an inquiry from governments other than their own, should, in like manner, obtain the price the European factories were quoting or had fixed and were bound not to quote or sell below it.<sup>6</sup>

5. For the sale of high explosives the world was divided into four districts. All of the United States, its territories and possessions, present and future, Mexico, Guatemala, Honduras, Nicaragua, and Costa Rica, Columbia, and Venezuela were to be exclusively American territory. All other countries in South America and the islands of the Caribbean Sea, not Spanish possessions, were to be common territory and designated as "syndicated territory." The Dominion of Canada and the Spanish possessions in the Caribbean were to be a free market unaffected by the terms of the agreement. The rest of the world was to be exclusively the territory of the European factories.

<sup>1</sup> These companies were Vereinigte Koln Rottweiler Pulver Fabriken of Cologne and the Nobel-Dynamite Trust Company (Ltd) of London

<sup>2</sup> Du Pont de Nemours and Company, Lafin and Rand, Eastern Dynamite, Miami Powder Co., American Powder Mills, Aetna and Austin Powder Cos., Cal Powder Works, Giant Powder Co., Consolidated, Judson Dynamite & Powder Co

<sup>3</sup> European Agreement, Gov't Exhibit No 119, Pet. Rec Exhibits, vol 11, pp. 1124-1125.

<sup>4</sup> Ibid., p. 1125.

<sup>5</sup> Ibid , p. 1125

<sup>6</sup> Ibid., pp. 1125-1126.



6. A chairman and vice-chairman were to be appointed by each party to the agreement. The chairmen or in their absence the vice-chairmen were to establish the rules for the accomplishment of the terms of the syndicate arrangement. (a) They were to agree, from time to time, upon a basis price for each market in syndicated territory, said basis to include the cost of manufacturing, freight, insurance, etc. (b) They were also to establish a selling price for each market to be regarded as a convention price below which no sales were to be effected. The difference between the selling and the basis prices was to be syndicate profit to be divided equally.<sup>1</sup>

7. A common syndicate fund of \$50,000 was to be established by a payment of \$1.00 per case upon certain grades of explosives shipped into syndicated territory. When the sum of these assessments reached that figure the payments were to be reduced to 50 cents per case and from the fund thus established fines not recoverable from the parties were to be deducted. It was permitted that the chairman should utilize two-thirds of this common fund for the purpose of protecting the common interest against outside competition.<sup>2</sup>

8. Chairmen were to adjudicate all breaches of the agreement. On failure to agree they were to appoint an umpire, who was to be a European or an American according as the complaint was brought by the American or European factories.<sup>3</sup>

9. Fines: (a) for trading in the territory of the other, the penalty was the invoice value of the goods; (b) for cutting prices in syndicated territory, no limit was placed upon the amount of the fine; (c) for erecting a factory in the exclusive territory of the other, the penalty should not be less than £10,000.<sup>4</sup>

10. The agreement was to go into effect on July 15, 1897, for a period of ten years. In the absence of six months' notice it was to continue thereafter from year to year.<sup>5</sup>

The "European Agreement" was very shortly followed by the "Mexican Agreement." On October 1, 1898, the California Powder Works, the Judson Dynamite and Powder Company, and the Giant Powder Company, Consolidated, known as the "Western Companies," entered into a compact with the Eastern Dynamite Company and the Aetna Powder

<sup>1</sup> Ibid , pp. 1127-1128

<sup>4</sup> Ibid , p. 1129

<sup>2</sup> Ibid., p. 1128.

<sup>5</sup> Ibid., p. 1130.

<sup>3</sup> Ibid , pp. 1128-1129, 1130-1131.

Company, known as the "Eastern Companies," in regard to the Mexican trade.<sup>1</sup> A price schedule was prepared by the parties with which they agreed to comply during its continuance.<sup>2</sup> A "Board of Representatives" of two members was established for the Mexican business, one member to be appointed by the Eastern and one by the Western companies. These were given power to investigate complaints and impose penalties. If unable to adjust the matter satisfactorily, the representatives were to appoint two disinterested parties as arbitrators who should in turn appoint a third, if a decision was necessary, to constitute a Board of Arbitrators. Their decision was to be final.<sup>3</sup> The agreement was to continue in force until December 31, 1899, and from year to year thereafter except upon notice of three months.<sup>4</sup> As a matter of actual fact, parties continued to carry out the terms of the agreement down to 1905.<sup>5</sup>

The force of the Mexican Agreement was considerably strengthened by the arrangement of October 11, 1898, between the Eastern Dynamite Company and the Hancock Chemical Company, whereby the latter agreed to turn over its entire output — except an amount sufficient to supply the needs of certain specified mining companies, — in consideration of \$18,000 a year, for the privilege given of acting as their exclusive sales agent, and a price for their powder of 15 per cent over and above the cost of manufacture and delivery. The agreement was to go into force in November, 1898, for five years, and as usual the "year to year

<sup>1</sup> Mexican Agreement, Gov't Exhibit No 268, *Pet Rec Exhibits*, vol 1v, p 2081, ff.

<sup>2</sup> *Ibid*, pp 2084-2085.

<sup>3</sup> *Ibid*, p. 2087

<sup>4</sup> *Ibid*, p 2097

<sup>5</sup> *Brief*, vol 2, p. 192

thereafter" clause was attached.<sup>1</sup> By a subsequent agreement the Lake Superior Powder Company and the Aetna Powder Company agreed to assume the obligations of this contract, the Eastern Dynamite Company failing performance.<sup>2</sup> A second supplementary agreement between the Eastern Dynamite Company and the Aetna and the Lake Superior Powder Companies provided that the two latter should bear a portion of the expense of the Eastern Dynamite Company's performance of its contract with the Hancock Chemical Company inasmuch as this contract was undertaken for the benefit of all the parties.<sup>3</sup>

The second period then, to summarize, saw the complete consolidation of the dynamite trade of the United States and the practical elimination of competition in that field as well as in the manufacture of gunpowder. The power and monopoly of the combination had been extended by numerous agreements, among which the European and Mexican may be mentioned most prominently.

### PERIOD III

In the third period the steadily increasing concentration is further strengthened by the adoption of a corporate form of organization which placed one huge concern at the head of the greater part of the explosives business of the United States.

Prior to the year 1899, E. I. du Pont de Nemours and Company had been a partnership, but in that year it became a corporation under the same name.

<sup>1</sup> Hancock Agreement, Gov't Exhibit No. 265, Pet. Rec. Exhibits, vol. iv, pp. 2074-2078.

<sup>2</sup> Supplementary Hancock Agreement, Gov't Exhibit No. 266, Pet. Rec. Exhibits, vol. iv, pp. 2078-2079.

<sup>3</sup> Second Supplementary Hancock Agreement, Gov't Exhibit No. 267, Pet. Rec. Exhibits, vol. iv, pp. 2079-2080

In 1902, Eugene du Pont, who had been the active manager of the partnership and later of the corporation, died. None of the other stockholders were willing to assume the management of the corporation and as a result Alfred du Pont requested the coöperation of Pierre S. and Thomas Coleman du Pont, who had not previously been interested in the business. Subsequently there was incorporated in 1902, in Delaware, by Thomas, Pierre, and Alfred du Pont, a corporation known as the E. I. du Pont de Nemours Company (afterwards E. I. du Pont de Nemours and Company) for the purpose of purchasing the 1899 corporation. The company had a capital stock of \$20,000,000 and issued \$11,997,000, of which the three du Ponts got \$8,940,000 as promoters' profits.<sup>1</sup> Purchase money notes were issued to the amount of \$12,000,000, which together with the balance of the \$11,997,000 stock were exchanged for the properties of the old corporation by the new 1902 Delaware corporation.<sup>2</sup> In order to make this company a purely holding corporation there was organized the E. I. du Pont de Nemours and Company of Pennsylvania and the E. I. du Pont Company.<sup>3</sup> To these two concerns the 1902 Delaware corporation then transferred all its physical properties and assets, retaining merely the securities of these two constituent companies.<sup>4</sup>

Not long after the organization of the Delaware corporation (1902) the du Ponts discovered that the Laffin and Rand Company was interested in sub-

<sup>1</sup> They subscribed in cash \$3000, and in return secured the control of the company for when the Government suit was brought in 1907, only a little over \$12,000,000 of stock was outstanding

<sup>2</sup> Brief for the United States, vol. 1, pp. 69-71. Resolutions of Directors, Gov't Exhibit No. 168, Pet. Rec. Exhibits, vol. iv, pp. 1792-1793 Pleadings, Answer of H. A. du Pont, p. 313.

<sup>3</sup> Brief, vol. 1, p. 72.

<sup>4</sup> The capitalization of these companies was \$20,000 and \$10,000 respectively

stantially the greater part of the same concerns as they themselves and also that the combined holdings of the du Pont and Laffin and Rand interests were sufficient to give control to these two concerns of the most of the companies in which they both held stock.<sup>1</sup> The du Pont company, moreover, owned no dynamite plant, altho it was a minority holder in the Eastern Dynamite Company, the Lake Superior Powder Company, and the California Powder Works. On October 1, 1902, the Delaware corporation had minority holdings in fifteen concerns, a majority holding in a sixteenth, a fifty per cent holding in a seventeenth, and owned all the capital stock of the Hazard Powder Company. The latter company in turn had minority holdings in six companies. At the same time the Laffin and Rand interests possessed minority holdings in thirteen companies, fifty per cent holdings in two companies, and majority holdings in two companies.<sup>2</sup> Of all the parties to the powder combination on October 1, 1902, only seven would not be controlled by the 1902 Delaware corporation if it could secure control of Laffin and Rand.<sup>3</sup>

The men at the head of Laffin and Rand at this time were all elderly and the du Ponts had no means of knowing what types of men might step in to take their places.<sup>4</sup> As most of their own stocks were worthless for purposes of control, except in conjunction with Laffin and Rand, the du Ponts finally determined to buy out that concern. Laffin and Rand, however, at first demanded \$700 a share for their stock; but as

<sup>1</sup> Testimony of Pierre S. du Pont, Def. Rec. Testimony, vol. 1, pp. 489-490.

<sup>2</sup> *Ibid.*, pp. 485-489 and 532-533.

<sup>3</sup> Brief, vol. 2, p. 242.

<sup>4</sup> *Ibid.*, footnote 105, pp. 490-491 and testimony of J. A. Haskell, Def. Rec. Testimony, vol. ii, pp. 1083-1084.

the du Ponts did not feel able to pay so large a sum in cash, matters were finally compromised. The entire capital of the Laffin and Rand Company was 10,000 shares of which certain parties held a majority block of 5,524 shares. Ten of the parties<sup>1</sup> who held the 5,524 shares also held 950 shares of the stock of the Moosic Powder Company. The same ten parties held 3,380 shares of the majority block of the 5,524 shares in the Laffin and Rand Company and they refused to sell the same unless they could also sell their holdings of Moosic stock at a certain price.<sup>2</sup> This demand was finally agreed to and thereupon Thomas Coleman du Pont secured an option upon the said 3,380 shares, the 950<sup>3</sup> shares of Moosic stock and also upon the balance of the 5,524 shares.<sup>4</sup>

As the next step in the process the Delaware Securities Company was organized to purchase and hold certain stock to be purchased from Laffin and Rand.<sup>5</sup> It began business with a paid-up cash capital of \$2,000, and an authorized capital stock of \$4,000,000.<sup>6</sup> On September 23d, the Board of Directors passed a resolution for the acquirement of 5,524 shares of the optioned stock of the Laffin and Rand Company to be paid for together with the services of T. C. du Pont by \$3,998,000 in the stock of and \$2,209,600 in the bonds of the Delaware Securities Company.<sup>7</sup> This resolution of the Board was carried out, except that a small

<sup>1</sup> Gov't Exhibit Nos. 230 and 231, Pet Rec Exhibits, vol iv, pp 1979-1980

<sup>2</sup> Cf. Ans of the Del Investment Co., Pleadings, p 220.

<sup>3</sup> Resolutions of the Directors of the Del Investment Co, Gov't Exhibit No. 166, Pet Rec. Exhibits, vol. iv, pp 1788, ff.

<sup>4</sup> Resolutions of the Directors of the Del. Securities Co, ibid, pp 1756, ff.

<sup>5</sup> Answer of the Del Securities Co., Pleadings, p 225

<sup>6</sup> Certificate of Incorporation of Del Securities Co., Gov't Exhibit No. 144, Pet. Rec. Exhibits, vol. iv, p 1742

<sup>7</sup> Cf. note 3.

portion of the stock was utilized in partial exchange for the shares of Laffin and Rand outside of the 5,524 purchased under the terms of the option.<sup>1</sup>

In the same month the Delaware Investment Company was organized for the purpose of exercising the option held by T. C. du Pont for 950 shares of the stock of the Moosic Powder Company. It had, like the Delaware Securities Company, a paid-up capital of \$2000. Its authorized issue was \$2,500,000.<sup>2</sup> On September 23d, the Board of Directors authorized the purchase of the Moosic stock to be paid for, together with the service of T. C. du Pont in \$2,498,000 full-paid non-assessable capital stock and \$2,500,000 bonds.<sup>3</sup> Now both the Moosic and Laffin and Rand stocks were purchased with the bonds of these two companies plus a stock bonus. Consequently in consideration of the services of Thomas Coleman du Pont in securing the consent of certain stockholders of Laffin and Rand to the sale of their property and that of the Moosic Company the two Delaware subsidiaries, *i. e.*, the Delaware Securities Company and Delaware Investment Company, transferred to the 1902 Delaware corporation, *i. e.*, E. I. du Pont de Nemours and Company a majority of their issues of stock of \$3,998,000 and \$2,498,000 respectively.<sup>4</sup> In this manner the 1902 Delaware corporation secured complete control of all but ten of the companies in the powder and explosive business that had heretofore been members of the combination.

<sup>1</sup> Brief, vol. 2, p. 247.

<sup>2</sup> Certificate of Incorporation of the Del Investment Co., Gov't Exhibit No. 145, Pet. Rec. Exhibits, vol. 1v, p. 1747

<sup>3</sup> Cf., p. 472, note 4

<sup>4</sup> The total actual payment for the entire Laffin and Rand property including minority holdings was about \$4,000,000 in bonds and a stock bonus of 20 per cent, for the 950 shares of Moosic about \$2,350,000 in bonds and a 25 per cent stock bonus. Cf. Testimony of Pierre S. du Pont, Def. Rec. Testimony, vol. 1, pp. 519-522

These ten concerns were as follows: —

Austin Powder Company; California Powder Works; American Powder Company; Miami Powder Company; King Powder Company; Aetna Powder Company; Giant Powder Company; Judson Dynamite and Powder Company; Hancock Chemical Company; Equitable Powder Manufacturing Company.<sup>1</sup>

It will, however, be recalled that of these concerns both the Judson and the Giant Companies had been parties to the European Agreement;<sup>2</sup> that the Eastern Dynamite Company had working agreements with the Hancock Chemical Company which the Aetna had bound itself to observe,<sup>3</sup> and that the Aetna and Eastern Dynamite Company had also entered into an agreement with each other known as the "Memorandum of Understanding";<sup>4</sup> and finally that by another agreement the output of the King Company for a period of twenty-five years from 1901 was under the control of the 1899 Delaware corporation which had been reincorporated as the 1902 Delaware corporation and Lafin and Rand.<sup>5</sup> It is also to be noted that the Miami Powder Company and American Powder Mills were at that time and continued to be down to 1904, partners to the Fundamental Agreement of 1896, and to the European Agreement down to the date of its discontinuance in the fall of 1906.<sup>6</sup>

<sup>1</sup> The Austin Powder Co., the Cal. Powder Works, and the Equitable Powder Mfg. Co. have been included in this list because they were not absolutely controlled. It should be borne in mind, however, that the 1902 Delaware corporation acquired, through Lafin and Rand, and the 1899 Delaware corporation 32 per cent of the stock of the first, 20 per cent of that of the second, and 49 per cent of that of the third.

<sup>2</sup> *Supra*, p. 466, note 2.

<sup>3</sup> *Supra*, p. 469, note 1.

<sup>4</sup> *Supra*, p. 465, note 1.

<sup>5</sup> *Supra*, p. 463, note 4.

<sup>6</sup> Brief, vol 1, p. 79.



Between October, 1902, and July 28, 1903, the 1902 Delaware corporation further acquired stock in five companies<sup>1</sup> in which it had not hitherto had any direct interest and also made further acquisitions in the stock of its own subsidiaries.

In Pennsylvania there were operating besides E. I. du Pont de Nemours and Company, of Pennsylvania, four other companies: the Moosic Powder Company, in which the 1902 Delaware corporation had acquired a 31.66 per cent interest at the time of the Laffin and Rand transaction; the Consumers Powder Company of whose stock it held 25.23 per cent; the Enterprise Manufacturing Company in which it owned a 35.12 per cent interest and the Oliver Powder Company of whose stock it was sole owner.<sup>2</sup> On September 11, 1903, all these companies were merged in E. I. du Pont de Nemours and Company of Pennsylvania, a corporation with a capital stock of \$1,275,000, 7 per cent preferred, and \$725,000 common.<sup>3</sup>

On May 13, 1903, the E. I. du Pont de Nemours Powder Company was organized under the laws of New Jersey with a capital stock of \$50,000,000 equally divided between common and preferred.<sup>4</sup> To the 1902 Delaware corporation it issued \$15,600,000 preferred and \$13,600,000 common (a majority in both classes) in consideration of the equity which the 1902 Delaware corporation held in all the stocks which it

<sup>1</sup> Twenty-five per cent of the stock of the Ferndale Powder Co., 75 per cent of that of the Conenough Powder Company, 39 per cent of the Judson Dynamite and Powder Company, 50 per cent of the Shenandoah, and 32 37 per cent of the stock of the Globe Powder Company.

<sup>2</sup> Gov't Exhibit No 178, Pet Rec Exhibits, vol iv, p 1805-1806 Answer of E I du Pont de Nemours and Co., Pleadings, p. 135

<sup>3</sup> Agreement for Merger, Gov't Exhibit No 255, Pet. Rec. Exhibits, vol iv, p. 2029 ff.

<sup>4</sup> Certificate of Incorporation, Gov't Exhibit No 71, Pet Rec Exhibits, vol i, p. 377 ff.

controlled.<sup>1</sup> The New Jersey company further guaranteed principal and interest of the obligations of the 1902 Delaware corporation incurred in the purchase of the properties of the 1899 Delaware corporation.<sup>2</sup>

Further combination followed swiftly. The New Jersey company next acquired 16,835 shares in the California Powder Works in addition to twenty per cent of its stock already held,<sup>3</sup> thereby securing control of the majority thereof. The California Investment Company was then organized by the 1902 Delaware corporation and T. C. and P. S. du Pont then caused it to issue its bonds for practically all of the capital stock of the Judson Dynamite and Powder Company.<sup>4</sup> This left uncontrolled by the combination only three companies, which had been parties to the agreement of 1896. These three concerns on July 1, 1904, entered into an agreement with the combination to continue until June 30, 1905, and thereafter unless three months' notice in writing of the discontinuance of said agreement were served.<sup>5</sup> The terms were practically the same as those of the Understanding of 1896<sup>6</sup>, and the Dynamite Agreement of 1895.<sup>7</sup> In March, 1905, the agreement was discontinued by the action of the Aetna and the Miami companies.<sup>8</sup>

<sup>1</sup> Answer E I du Pont de Nemours & Co., Pleadings, pp 124-125 and Gov't Exhibit No. 178, Pet. Rec. Exhibits, vol 1v, p. 1803, ff.

<sup>2</sup> Brief, vol 2, pp 285-286. By this series of operations the 1903 N. J. Co. acquired control of all the capital stocks formerly held by the 1902 Delaware corporation, the Hazard Powder Company and subsidiaries, Laffin and Rand and controlled companies and the Eastern Dynamite and controlled companies

<sup>3</sup> See p. 476, note 1.

<sup>4</sup> Answer E I du Pont de Nemours Co., Pleadings, p. 140.

<sup>5</sup> The Sullivan Agreement, Gov't Exhibit No 237, Pet. Rec. Exhibits, vol 1v, p. 1995 ff.

<sup>6</sup> *Supra*, p. 456, note 6.

<sup>7</sup> *Supra*, pp 466-467.

<sup>8</sup> Brief, vol 2, p 292. It was claimed that the trade of those withdrawing, however, was respected by the combination, more especially because it was so insignificant. Testimony E. C. Fernday, Def. Rec. Testimony, vol. 1, pp 48-53.

On July 1, 1903, a sales board was organized and a complicated system of salesmanship put in force by the combination with a system of reports to the "Trade Record Bureau" at Wilmington, Delaware. In further pursuance of the combination 49,950 shares of the California Vigorit Powder Company were purchased and between August, 1903, and May 8, 1909, all the capital stock of the Metropolitan Powder Company was also acquired by the combination.<sup>1</sup>

In 1903, the American E. C. & Schultze Gunpowder Company, a corporation of Great Britain, commenced to compete with the combination; but in the same year it transferred its properties and business to the E. I. du Pont Company, a subsidiary of the New Jersey company for a period of ninety-nine years in return for a yearly rental of £3,750.<sup>2</sup> In the same year the International Smokeless Powder and Chemical Company began operating a plant in the state of New Jersey where it manufactured Government Ordnance Powder for sale to the army and navy of the Government of the United States. To secure control of this corporation the du Pont International Powder Company was organized in Delaware<sup>3</sup> with a capital stock of \$5,000,000 preferred and \$5,000,000 common. It issued \$10,000,000 of its bonds and a large share of its preferred stock for a majority of the capital stock of the International Smokeless Powder and Chemical Company.<sup>4</sup> From time to time, the stocks of other competing companies were also acquired.

<sup>1</sup> Resolution of Directors Gov't Exhibit No 188, Pet Rec Exhibits, vol. iv, pp. 1833-1834 and vol. iii, p 1697.

<sup>2</sup> Indenture. Gov't Exhibit No 307 Pet Rec Exhibits, vol. v, pp. 2359-2374. Cf., especially pp. 2359 and 2368

<sup>3</sup> Certificate of Incorporation, Gov't Exhibit No. 76. Pet. Rec Exhibits, vol. i, pp. 450, ff

Answer of the E. I. du Pont de Nemours and Co, Pleadings, pp 145-147.

From this time to the bringing of suit in 1907 by the Government, the combination continued to operate substantially as before. Competition, it is true, was not eliminated, but was none the less reduced to a comparatively small portion of the trade, as is shown by the following table:—

PERCENTAGES SOLD BY COMPANIES CONTROLLED BY  
E. I. DU PONT DE NEMOURS POWDER COMPANY

Year.	Black Blasting Powder	Saltpeter Blasting Powder	Dynamite	Black Sporting Powder	Smokeless Sporting Powder	Gov. Ordnance
1905	64.6	80	72.5	75.4	70.5	All
1906	63.4	69.5	73	72.6	61.3	"
1907	64	72	71.5	73.6	64	"

In 1907, the habit of cutting prices was discontinued. In the latter part of that year the first printed schedule of prices was put out and the sales prices were subsequently held very close to these lists with little or no deviation except in the case of large contracts.<sup>1</sup>

In this connection a word ought to be said in regard to prices. At the very outset prices were fixed, immediately after the organization of the Gunpowder Trade Association. It has already been shown that increases in prices were made subsequent to the agreements of both 1886 and 1896. There is ample testimony also to show that prices were raised after the acquisition of the Lafin and Rand interests in 1902, again between 1902 and 1904, and also by the sales board in 1907. Unfortunately the data are not sufficient to permit the preparation of a table showing these various price changes. The reasons that make this a practical impossibility are two. The first is

<sup>1</sup> Testimony of G. F. Hamlin, Charles W. Phellis, F. C. Peters, F. W. Stark, and others. Def. Rec. Testimony, vol. 1, pp. 60-61, 97, 185-186, 188, 202, 228-229.

that, as noted in the preceding paragraph, a printed schedule of prices was not published until 1907. Prior to that date prices were fixed and altered at the meetings of the various boards and committees, and are to be followed only in the minutes of these price-making organs. In the second place, prices in the powder trade, as in the oil business, have been largely local. Between various parts of the country there have been wide discrepancies. The general policy in prices appears to have been to charge what the traffic would bear. It should be borne in mind, however, that tho the policy of the powder combination has been to this extent analogous to that of the Standard Oil Company, the former has been much more limited than the latter by the factor of potential competition. The manufacture of powder does not require a very great amount of capital and high profits appear to call potential competition into being. For this reason it has been impossible for the Powder Trust, until recently, either to maintain fixity in prices, or to raise them to such a height as might have been the case under other conditions. Yet it would be entirely unsafe to conclude either that the profits on powder have not been excessive or that the high profits have resulted from other causes than the large degree of control exercised by the combination.

Decidedly the most interesting feature of the combination after the formation of the 1902 and 1903 corporations was the policy pursued with regard to subsidiary companies. The 1903 corporation and the Eastern Dynamite Company had up to 1907 acquired the stocks of more than one hundred corporations. In April, 1904, the dissolution of these companies was begun and in that year and 1905, a large portion

of them were dissolved. By 1907, sixty-four of the subsidiary corporations had passed out of existence.<sup>1</sup>

In a sense this is a comparatively new and original method of procedure. The du Pont Company has been the only industrial combination that has resorted to such a process upon an extended scale. The ultimate object of this policy was to create a single huge concern in the control of the powder trade and to vest absolutely therein the ownership of all the plants and factories which had formerly belonged to the various subsidiary companies. It was designed also, as soon as possible, to discontinue the Laffin and Rand and the Hazard Powder Companies, the Eastern Dynamite Company, and the Delaware Securities and Delaware Investment Companies.<sup>2</sup> Had the Government's suit not intervened this result would have probably been attained and we should have had a unique form of industrial combination. The property of the dissolved companies was purchased outright, and the title probably cannot be impaired by the courts. The problem of dissolution therefore that the courts have to deal with is one that presents apparently a greater degree of difficulty than was involved in either the Standard Oil or Tobacco decisions. As the Court remarks: "The dissolution of more than sixty corporations since the advent of the new management in 1902, and the consequent impossibility of restoring original conditions in the explosives trade, narrows the field of operation of any decree we may make."<sup>3</sup>

The Circuit Court adjudged the combinations in restraint of commerce in explosives and with attempting

<sup>1</sup> Cf. List of Companies "Opinion of the Court and Interlocutory Decree", pp. 31-32.

<sup>2</sup> *Ibid.*, pp. 31-32

<sup>3</sup> Interlocutory Decree, pp. 43-44

to monopolize and monopolizing a part of such commerce. They were enjoined and ordered to dissolve. The decree was made interlocutory and the defendants were to be heard again,<sup>1</sup> as to the nature of the injunction and as to any plan of dissolution which they might have to suggest. It can hardly be doubted that such plan will be of great interest, owing to the peculiar policy pursued by the combination within the last few years, and the rapid approach that has been made to a great single monopolistic corporation. At the date this article goes to press, however, the dissolution plan has not been decided upon. At a hearing in the early part of March, lawyers and judges failed to reach an agreement.

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<sup>1</sup> Originally the court set the hearing for October 16, 1911, but it has been postponed from time to time.